

REMARKS

Amendments to the Claims

Claims 107 and 112 are amended herein to correct clerical errors. Applicant contends that the amendments are supported by the Specification as filed and thus do not contain new matter.

Claim Rejections Under 35 U.S.C. § 112

Claims 103-108, 112, 152-153, 156-168, 170-175 and 177 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicant respectfully traverses.

The Final Office Action asserts, “Claim 103 has been amended to recite ‘..wherein each of the links is associated with a single one of the digital information blocks.’ This feature is not taught or supported in the original specification. The only discussion of relations between links and information are set forth at pages 26 and 27.” Final Office Action, page 2, second to last paragraph (emphasis added). Applicant notes that the same rationale applied to claim 103 was applied to claim 107. *See*, Final Office Action, page 3, fifth paragraph. Applicant contends that this assertion is clearly unsupported by the record as the cited portions are NOT “the only discussion of relations between links and information.” There are clearly other sections of the Specification that discuss different relations between links and information. And, it is these additional sections of the Specification that support the claim wording.

For example, on pages 38-41 of the Specification, the Document Control Number (DCN) is an example of a link, the Electronic Medical Record (EMR) is an example of a digital information block, and a Patient Bid Queue (PBQ) is an example of a list of links. This section of the Specification expressly teaches the element of claims 103 and 107 that a link is associated with a single digital information block through at least the following statements:

1. “The Patient Bid Queues (PBQs), in an exemplary case, are computer directories of Electronic Medical Records (EMRs)” Specification, page 38, last paragraph.
2. “the contents of the PBQs and PMBs can be pointers, links or shortcuts to the actual EMRs containing the EMIs to be read.” Specification, page 39, last paragraph.
3. “The operating software of the CHC 200 then places the Document Control Number corresponding to the patient’s EMR in the appropriate Patient Bid Queue (PBQ) or Provider Mail Box (PMB).” Specification, page 41, second paragraph.
4. “By highlighting or selecting the DCN for his/her EMR, the patient will be able to determine the relative velocity of his/her EMR through the selected PBQ or PMB.” Specification, page 41, third paragraph.

In addition, Applicant’s Specification provides at page 33, last two lines to page 34, fourth line:

“The operating software turns the EMF is [sic] into a computer file and electronically attaches the digitized ‘diagnostic medical image’ to the form. The entire computer file thus becomes the patient’s Electronic Medical Record (EMR). Finally, a Document Control Number (DCN) is assigned to the patient’s EMR, which advantageously allows the patient/gatekeeper, the diagnostic physician performing the reading, and the operating system of the CHC 200 to follow (track) and access the EMR as it moves through the RAMIX system.”).

In this foregoing excerpt, it is clear that an EMR is a digital information block. It is a single computer file containing both the EMF (Electronic Medical Form) and the EMI (Electronic Medical Image) of a single patient. As noted in the prior example, the DCN is a link that can be highlighted or selected. Thus, a single link, i.e., the DCN, is associated with a single digital information block, i.e., the EMR of a single patient.

Applicant contends there are additional examples showing the concept of a link being associated with a single digital information block. As a further example, the Specification, page 44, first paragraph, provides:

“During step 608, the diagnostic physician receives a list of DCNs corresponding to the patient EMIs available for reading. The diagnostic physician selects the first DCN in the list. This selection results in several simultaneous actions in CHC 200. First, all of the other diagnostic physicians reviewing the same PBQ are locked out of the EMR having the selected EMI. Second, the CHC 200 transmits the EMR including patient information from the EMF, which preferably is displayed in area 412 on the screen of computer 410, and a preview image corresponding to either the sole or first digitized diagnostic image in the patient’s EMI. . . . When the diagnostic physician does not wish to read the currently previewed EMI, the diagnostic physician rejects the EMI and the DCN is deselected; thus, the other diagnostic physicians are no longer locked out of the rejected EMI.”

Applicant contends that the foregoing excerpt is a clear example of a digital information block, i.e., the EMR, associated with a single link, i.e., the DCN. Selection of the DCN locks the EMR from further access, and deselection of the DCN unlocks the EMR to permit further access. There is no interpretation of this paragraph that would permit a DCN to be associated with more than one EMR. If the rejection is to be maintained on the basis that there is no support for a link to be associated with a single digital information block, Applicant respectfully requests that the Examiner provide a reasoned statement as to how, in context of the foregoing paragraph, it would be feasible to perform the listed actions in CHC 200 if the DCN is associated with more than one EMR.

It should be noted, that the Final Office Action focuses on a link being associated with plural images. *See, e.g.*, Final Office Action, page 3, third paragraph (“In each quote, the pointer is demonstrated as being linked to plural electronic images.”). However, Applicant contends that the linking of plural electronic images to a single pointer is not inconsistent with the concept of a single link being associated with a single digital information block. In particular, an EMR can contain more than one digital image. *See, e.g.*, Specification, page 44, lines 4-7 (“Second, the

CHC 200 transmits the EMR including patient information from the EMF, which preferably is displayed in area 412 on the screen of computer 410, and a preview image corresponding to either the sole or first digitized diagnostic image in the patient's EMI.”). The recitation of “sole or first digitized diagnostic image” clearly defines that there could be one or more images associated with a single EMR. In addition, Applicant expressly teaches that an EMR could contain an MRI. *See, e.g.*, Specification, page 2, item (6). Applicant contends that it is well known that MRIs contain multiple images. Thus, a single link can be associated with multiple digital images while still being associated with a single digital information block, i.e., the computer file containing those images.

In view of the foregoing examples, Applicant contends that there is clear support for the association of a link with a single one of the digital information blocks. While Applicant acknowledges that the two sentences quoted by the Final Office Action may not fully address the subject matter of claim 103, Applicant contends that the Specification as a whole must be considered for its teachings, and that Applicant cannot be limited to the disclosure of only the two quoted sentences as interpreted in the Final Office Action. *Cf.* MPEP § 2164.06(c) (“the reasons for finding the specification to be nonenabling should be supported by the record as a whole”). As noted above, the Specification provides details of several example embodiments where a link, e.g., a Document Control Number, is associated with a single digital information block, e.g., a patient’s Electronic Medical Record.

The Final Office Action further asserts, “However, since the specification never invokes or otherwise defines the term ‘information block’, and since distinct plural images would only suggest plural information blocks, the disclosure only suggests a link to plural information blocks, not a link to a single information block.” Final Office Action, page 3, third paragraph. Applicant contends this is an invalid assertion. While Applicant may not have expressly defined the term “digital information block,” Applicant contends that it has provided examples of such digital information blocks. For example, page 14, last paragraph of the Specification recites, “buffer memory for storing a plurality of digital information blocks” while page 38, first full paragraph of the Specification recites, “actual medical records [EMRs] advantageously can be stored in a buffer memory.” Similarly, page 15, first paragraph of the Specification recites that the digital information blocks are, “in an order established by the first users and reflecting time

of arrival” while page 38, first full paragraph recites that the EMRs are, “shown in a consolidated listing sorted on the bid price offered for the reading and the date-time the EMR containing the EMI is received.” Thus, Applicant contends that there is clear support that EMRs are examples of digital information blocks recited in Applicant’s claims. In addition, even without an express definition as to the meaning of the term “digital information block,” the term is entitled to its ordinary and customary meaning attributed by those of ordinary skill in the art. MPEP § 2111.01. Applicant contends that the Office has provided no purported ordinary and customary meaning for a digital information block that would only permit it to refer only to a single image as asserted by the Final Office Action.

The Final Office Action further asserts, “Additionally, claim 177 recites the action of recording when as [sic] link has been used and to record when an information block has been downloaded. The original specification contains no discussion of recording link usage or block downloading in any manner of record, so this feature is additionally found to be new matter.” Final Office Action, page 3, last paragraph. Again, Applicant contends that this assertion is invalid. The Specification, page 44, first paragraph provides, “The diagnostic physician selects the first DCN in the list. This selection results in several simultaneous actions in CHC 200. First, all of the other diagnostic physicians reviewing the same PBQ are locked out of the EMR having the selected EMI. . . . When the diagnostic physician does not wish to read the currently previewed EMI, the diagnostic physician rejects the EMI and the DCN is deselected; thus, the other diagnostic physicians are no longer locked out of the rejected EMI.” The Specification, page 37, second paragraph further provides, “It will be appreciated that the contents of Table 1 are changing continuously as images come in from patients and are downloaded by the diagnostic providers.” Thus, the concept of recording when a link has been used and when a digital information block has been downloaded is supported by the Specification as filed as it would be inherently impossible to lock out an EMR in response to selection of a DCN without recording its selection or to update a table in response to downloading an EMR without recording that the EMR was downloaded.

In view of the foregoing, Applicant contends that each of the rejections under 35 U.S.C. § 112, first paragraph, is premised on one or more invalid assertions such that none of the rejections are supported by the record such that claims 103, 107 and 177 are fully supported by

the Specification as filed, and thus are allowable. As claims 104-106, 152-153, and 156-165 include all patentable elements of claim 103, and claims 108, 112, 166-168, 170-175 and 177 include all patentable elements of claim 107, these claims are further believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, first paragraph, and allowance of claims 103-108, 112, 152-153, 156-168, 170-175 and 177.

Claim Rejections Under 35 U.S.C. 101

Claims 152-153, 156-158 and 170-175 were rejected under 35 U.S.C. 101 because the claimed invention is inoperable and therefore lacks utility. Applicant respectfully traverses.

With regard to claims 152 and 174, the Final Office Action asserts, “Each of these claims calls for action of ordering a list by using electronic labeling. The mere presence of a label (i.e. text) on an electronic item will not result in that item being ordered into a list. Additionally, a ‘label’ is a not [sic] parameter which could be used to determine the order of items in a sequential list. Accordingly, the invention is inoperable as claimed.” Final Office Action, page 4, third paragraph. Applicant contends that this assertion is clear error. Applicant contends that ordering lists by other than numeric parameters has been widely understood and well known far before Applicant’s filing date. Applicant submits that a common phone book is well known example of a list ordered by a label, i.e., alphabetical by customer names. In addition, Applicant contends that it expressly contemplated ordering lists using electronic labeling at the time of filing. *See, e.g.*, Specification, page 15, first full paragraph (“to arrange the electronic medical images in an order established by the electronic labeling of the electronic medical images”). Accordingly, Applicant contends that claims 152 and 174 are operable and, thus, allowable.

With regard to claims 156 and 170, the Final Office Action asserts, “Claims 156 and 170 specify the actions of selecting a link, downloading an information block and taking some undefined action in order to render payment for a bid. Payment requires a transfer of funds between two parties. Since these steps do not make any requirement for a transfer of funds, much less a transfer of funds between two parties, the payment action is not accomplished. Accordingly, the invention as claimed is inoperable.” Final Office Action, page 4, fifth paragraph. Applicant

contends that this reason for rejection is itself invalid. The Office has defined payment to be a transfer of funds between two parties, yet declares the invention as claimed inoperable for not reciting a transfer of funds to effect payment of the bid amount. Using the Office's own definition of payment, Applicant contends that as the claims recite "the bid amount is paid," a transfer of funds is inherent in the recited language, and thus the invention as claimed in claims 156 and 170 is necessarily operable in contradiction to the Office's assertion. *Cf.* MPEP § 2173.05(e) ("Inherent components of elements recited have antecedent basis in the recitation of the components themselves."). Accordingly, Applicant contends that claims 156 and 170 are operable and, thus, allowable.

In view of the foregoing, Applicant contends that each of the rejections under 35 U.S.C. § 101 is premised on one or more invalid assertions such that none of the rejections are supported by the record, and claims 152, 156, 170 and 174 are allowable. As claim 153 includes all patentable elements of claim 152, claims 157-158 include all patentable elements of claim 156, claims 171-173 include all patentable elements of claim 170, and claim 175 includes all patentable elements of claim 174, these claims are also believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 101, and allowance of claims 152-153, 156-158 and 170-175.

Withdrawn Claims

Applicant notes that withdrawn claims 154-155 include all patentable elements of allowable elected claim 103, and claims 169 and 176 include all patentable elements of allowable elected claim 107. As such, claim 103 is necessarily generic to claims 154-155 and claim 107 is necessarily generic to claims 169-176. Applicant notes that it is entitled to examination of all claims that are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR § 1.141. Applicant thus respectfully requests rejoinder and examination of withdrawn claims 154-155, 169 and 176.

CONCLUSION

Claims 107 and 112 are amended herein. Claims 103-108, 112, 152-153, 156-168, 170-175 and 177 are currently pending. Claims 154-155, 169, 176 and 178-194 are currently withdrawn, but Applicant has requested rejoinder with respect to at least claims 154-155, 169 and 176. In view of the above remarks, Applicant believes that all pending claims are in condition for allowance and respectfully requests a Notice of Allowance be issued in this case. Please charge any further fees deemed necessary or credit any overpayment to Deposit Account No. 501373.

Please deem this a petition for extension of time if necessary to maintain pendency of this patent application. Please charge any additional fees necessary to maintain pendency of this patent application or credit any overpayment to Deposit Account No. 501373.

If the Examiner has any questions or concerns regarding this application, please contact the undersigned at (612) 312-2204.

Respectfully submitted,

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